SUPREME COURT, U. S.

No. 73-510

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In the Supreme Court of the United States

OCTOBER TERM, 1973

WYANDOTTE COUNTY, KANSAS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

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Petitioners, a county of the State of Kansas and its officials responsible for the operation of the county's jail, seek review of a court of appeals decision that racial segregation of prisoners in the jail violated the Equal Protection Clause. In our view, that decision correctly implemented well established constitutional principles and there is no reason for further review by this Court.

The United States brought suit against petitioners under Title III of the Civil Rights Act of 1964, 42 U.S.C. 2000b, seeking, *inter alia,* injunctive relief against the racial segregation practiced in the operation of petitioners' jail. The district court expressly found that assignment of inmates to one of the two main areas of the jail was on account of race. "Thus, a 30-year old white man, charged with armed robbery, would be assigned to the

West tank, while a 30-year old black man, charged with the same offense, would be assigned to the East tank." 343 F. Supp. 1189, 1194 (D. Kan.). Nevertheless, the district court held there was no violation of the Equal Protection Clause, finding the racial segregation justified by petitioners' judgment that such a practice was indicated to provide for the safety of prisoners and jail officials. 343 F. Supp. at 1204.

The court of appeals reversed, in an opinion upon which we rely (Pet. App. A1-A6). The court of appeals carefully examined the evidence before the district court offered in support of petitioners' contention that safety considerations justified segregation (Pet. App. A4-A5), and concluded that the evidence showed no more than "a vague fear on the part of the authorities that desegregation may result in violence" (Pet. App. A5). It held that this did not warrant continued segregation in the jail, in light of the firmly established constitutional principles that a state may not require segregation of public facilities, *Johnson* v. *Virginia*, 373 U.S. 61, including jails and penal institutions, *Lee* v. *Washington*, 390 U.S. 333, and that "personal speculations or vague disquietudes of * * * officials" cannot suffice to excuse state-imposed segregation. *Watson* v. *Memphis*, 373 U.S. 526, 536.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.
J. STANLEY POTTINGER,
Assistant Attorney General.

NOVEMBER 1973.

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[1]Petitioners' contention that the instant decision creates a conflict among the circuits (Pet. 9-10) is negated by the fact that the Eighth Circuit, in affirming one of the district court decisions to which petitioners refer, specifically decreed an end to official segregation in penal facilities. See *McClelland* v. *Sigler*, 456 F. 2d 1266, 1267.